






PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 36488-167637												
	Application Number 09/982852-Conf. #7743	Filed October 22, 2001												
	First Named Inventor Bentley et al.													
	Art Unit 3621	Examiner C. O. Sherr												
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant /inventor.</td><td rowspan="4"> _____ Signature</td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>56,784</u></td></tr><tr><td><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</td></tr></table> <table border="0"><tr><td></td><td><u>Caroline J. Swindell</u> Typed or printed name</td></tr><tr><td></td><td><u>(703) 760-1676</u> Telephone number</td></tr><tr><td></td><td><u>July 20, 2006</u> Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant /inventor.	 _____ Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>56,784</u>	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____		<u>Caroline J. Swindell</u> Typed or printed name		<u>(703) 760-1676</u> Telephone number		<u>July 20, 2006</u> Date
<input type="checkbox"/> applicant /inventor.	 _____ Signature													
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)														
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>56,784</u>														
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____														
	<u>Caroline J. Swindell</u> Typed or printed name													
	<u>(703) 760-1676</u> Telephone number													
	<u>July 20, 2006</u> Date													
<input type="checkbox"/> *Total of <u>1</u> forms are submitted.														



Docket No.: 36488-167637  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Daniel V. EAST et al.

Application No.: 09/982,852

Art Unit: 3621

Filed: October 22, 2001

Examiner: C. O. Sherr

For: SYSTEM, METHOD AND COMPUTER  
PROGRAM PRODUCT FOR A FAIL-SAFE  
START-UP MECHANISM FOR CLIENTS OF  
A LICENSE SERVER

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

MS AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**INTRODUCTORY COMMENTS**

In response to the Office Action dated May 4, 2006, and in conjunction with the concurrently filed Notice of Appeal, please consider the following remarks for the above-identified U.S. patent application:

Claims 1-24 are currently pending.

Claims 1 currently recites "A method for providing access to application software in the event of inaccessibility of a license management system, comprising the steps of: determining whether a user has a valid software license to run a software application on a client workstation including sending a query to the license management system; and permitting a recognized user to

execute said software application on said client workstation **in the event that the license management system is unable to receive and/or respond to said query, and/or is unable to communicate with said client workstation about said query.** " Claim 24 similarly recites "program code means for enabling the computer to permit recognized users to execute said software application **in the event of that the license management system is unable to receive and/or respond to said query, and/or is unable to communicate with the computer about said query.**" Claim 16 similarly recites "wherein said client workstation comprises a validation device operative to permit a recognized user to execute said software application **in the event that the license management system is unable to communicate with said client workstation over said network.**"

Claims 1-4 and 7-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,671,412 to Christiano (hereinafter " Christiano "). Applicants have previously argued that Christiano does not disclose permitting a recognized user to execute said software application on said client workstation in the event that the license management system is **inaccessible**. In an interview on December 6, 2004, Examiner Sherr agreed that Christiano did not teach "permitting a recognized user to execute said software application on said client workstation in the event that the license management system is **inaccessible**" alone or in combination with other cited references. See Interview Summary of December 6, 2004. The term "inaccessible" was amended on February 15, 2006 to "unable to receive and/or respond to said query, and/or is unable to communicate with said client workstation about said query" in response to a later rejection under 35 USC 112.

However, the current Action again asserts that Christiano teaches "permitting a recognized user to execute said software application on said client workstation in the event that the license management system is unable to receive and/or respond to said query, and/or is unable to communicate with said client workstation about said query." See Action, page 3, section 8.

Christiano does not teach or suggest permitting a recognized user to execute said software application on a client workstation in the event that the license management system is **unable to receive and/or respond** to said query, and/or is **unable to communicate with** said client workstation about said query. Instead, Christiano describes a basic licensing client-server system

that includes a function to allow clients to check out a license when the normal number of licenses have already been allocated. (See Christiano col. 4, lines 55-57) and col. 17, lines 15-47. However, Christiano assumes communication between the client and the license server. Christiano does not teach or suggest what the client can do in the event that the license server cannot receive and/or respond and/or communicate about the query. Christiano **does not permit** a recognized user to execute the licensed software if there is no connection to the license server. The "failsafe license" of Christiano still must be issued by the server and requires the server to respond and communicate with the client. (See col. 17, lines 15-34 and col. 18, lines 23-44). The "failsafe status" is output from the server to the requesting client computer system. See col. 18, lines 33-35. Thus, Christiano requires a connection and communication to the server.

In contrast, the method recited in claim 1 permits a recognized user to execute the software when the license server is unable to receive and/or respond and/or communicate about the query. Also, there is no mention in Christiano of the concept of a recognized user. Therefore, Christiano does not teach or suggest permitting a recognized user to execute said software application in the event that the license management system is unable to receive and/or respond to said query, and/or is unable to communicate with said recognized user about said query,. The Action has not addressed this specific recited limitation of claim 1. The Action has stated neither how Christiano teaches this limitation nor why it would have been obvious to one of ordinary skill in the art to modify Christiano to obtain this limitation.

Because Christiano fails to teach "permitting a recognized user to execute said software application on said client workstation in the event that the license management system is unable to receive and/or respond to said query, and/or is unable to communicate with said client workstation about said query" of the claims, the Action fails to make a prima facie case for obviousness.

Application No.: 09/928,852

Docket No.: 36488-167637

Applicants respectfully request that the rejection be withdrawn and the claims be allowed.

Dated:

July 20, 2006

Respectfully submitted,

By   
Caroline J. Syndell

Registration No.: 56,784

VENABLE LLP

P.O. Box 34385

Washington, DC 20043-9998

(202) 344-4000

(202) 344-8300 (Fax)

Attorney For Applicant